

depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the judge to determine in accordance with the provisions of §18.104(a). However, when an issue is raised whether the asserted writing ever existed; or whether another writing, recording, or photograph produced at the hearing is the original; or whether other evidence of contents correctly reflects the contents, the issue is for the judge as trier of fact to determine as in the case of other issues of fact.

APPLICABILITY

§ 18.1101 Applicability of rules.

(a) *General provision.* These rules govern formal adversarial adjudications conducted by the United States Department of Labor before a presiding officer.

(1) Which are required by Act of Congress to be determined on the record after opportunity for an administrative agency hearing in accordance with the Administrative Procedure Act, 5 U.S.C. 554, 556 and 557, or

(2) Which by United States Department of Labor regulation are conducted in conformance with the foregoing provisions. *Presiding officer*, referred to in these rules as *the judge*, means an Administrative Law Judge, an agency head, or other officer who presides at the reception of evidence at a hearing in such an adjudication.

(b) *Rules inapplicable.* The rules (other than with respect to privileges) do not apply in the following situations:

(1) *Preliminary questions of fact.* The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the judge under §18.104.

(2) *Longshore, black lung, and related acts.* Other than with respect to §§18.403, 18.611(a), 18.614 and without prejudice to current practice, hearings held pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901; the Federal Mine Safety and Health Act (formerly the Federal Coal Mine Health and Safety Act) as amended by the Black Lung Benefits Act, 30 U.S.C. 901; and acts such as the Defense

Base Act, 42 U.S.C. 1651; the District of Columbia Workmen's Compensation Act, 36 DC Code 501; the Outer Continental Shelf Lands Act, 43 U.S.C. 1331; and the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. 8171, which incorporate section 23(a) of the Longshore and Harbor Workers' Compensation Act by reference.

(c) *Rules inapplicable in part.* These rules do not apply to the extent inconsistent with, in conflict with, or to the extent a matter is otherwise specifically provided by an Act of Congress, or by a rule or regulation of specific application prescribed by the United States Department of Labor pursuant to statutory authority, or pursuant to executive order.

§ 18.1102 [Reserved]

§ 18.1103 Title.

These rules may be known as the United States Department of Labor Rules of Evidence and cited as 29 CFR 18.____ (1989).

§ 18.1104 Effective date.

These rules are effective thirty days after date of publication with respect to formal adversarial adjudications as specified in §18.1101 except that with respect to hearings held following an investigation conducted by the United States Department of Labor, these rules shall be effective only where the investigation commenced thirty days after publication.

APPENDIX TO SUBPART B OF PART 18— REPORTER'S NOTES

Reporter's Introductory Note

The Rules of Evidence for the United States Department of Labor modify the Federal Rules of Evidence for application in formal adversarial adjudications conducted by the United States Department of Labor. The civil nonjury nature of the hearings and the broad underlying values and goals of the administrative process are given recognition in these rules.

REPORTER'S NOTE TO §18.102

In all formal adversarial adjudications of the United States Department of Labor governed by these rules, and in particular such